



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2012

Ms. Leticia Mendiola  
Crime Records Office  
City of McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2012-02056

Dear Ms. Mendiola:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 445059.

The McAllen Police Department (the "department") received a request for information related to a named individual. You indicate you have released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We

note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b). We also note that records relating to routine traffic violations are not considered criminal history information. *See id.* § 411.082(2)(B) (criminal history record information does not include driving record information).

In this instance, the requestor asks the department for all records associated with a named individual, thus implicating this individual's right to privacy. We note, however, the requestor indicates he has a release from the individual at issue, and thus, he may be an authorized representative of the individual whose privacy interests are implicated. In that case, the requestor would have a right of access under section 552.023 of the Government Code to any information the department would be required to withhold from the general public to protect the individual's privacy. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>1</sup> As we are unable to determine whether the requestor is the individual's authorized representative, we will rule conditionally. Thus, if the requestor is not the individual's authorized representative, then to the extent the department maintains any information that depicts the named individual as a suspect, arrested person, or criminal defendant, any such information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the individual's authorized representative, then the requested information may not be withheld on privacy grounds under section 552.101. Furthermore, we note you have submitted records in which the named individual is not listed as a suspect, arrestee, or criminal defendant. These records do not constitute a compilation of the individual's criminal history and may not be withheld under section 552.101 on this basis. Therefore, we will consider the applicability section 552.108 of the Government Code to this information.

Section 552.108(b) of the Government Code provides the following:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

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<sup>1</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(b). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not explained how release of the remaining information would interfere with law enforcement or crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). Thus, you have not demonstrated section 552.108(b)(1) is applicable to the information at issue.

A governmental body claiming section 552.108(b)(2) must demonstrate that the information at issue relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. As you have not demonstrated any of the remaining information is related to an investigation that concluded in a result other than conviction or deferred adjudication, you have not met your burden under section 552.108(b)(2). Lastly, you do not assert that the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See Gov't Code* § 552.108(b)(3). Consequently, you have failed to demonstrate the applicability of section 552.108(b)(3) to the information at issue. Thus, we conclude the department may not withhold any of the information at issue under section 552.108(b) of the Government Code.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state, or another state or country.<sup>2</sup> *Id.* § 552.130(a)(1)-(2). However, we note this exception protects personal privacy. Thus, if the requestor is the named individual's authorized representative, the requestor has a right of access under section 552.023 of the Government Code to the individual's driver's license and motor vehicle information, and the department may not withhold that information under section 552.130 of the Government

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code. *See id.* § 552.023; ORD 481 at 4. If the requestor is not the named individual's authorized representative, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not the named individual's authorized representative, then any information maintained by the department that depicts the individual as a suspect, arrested person, or criminal defendant must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is not the named individual's authorized representative, the department must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

  
Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 445059

Enc. Submitted documents

c: Requestor  
(w/o enclosures)